FILE COPY

Office - Supreme Court, U.
FILED
MAR 26 1949
CHARLES ELMORE ...
CLERK

Supreme Court of the United States

OCTOBER TERM, 1948

Nos. 529-530-531

STANDARD OIL COMPANY,
A Corporation of the State of Indiana,
Appellant,

vs.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and the HONORABLE FRANK L. SPEAKMAN, Sitting as Judge of Said Court, and JACOB BLAUSTEIN

Appellees

APPEALS FROM THE SUPREME COURT OF THE STATE OF DELAWARE

PETITION FOR REHEARING

HUGH M. MORRIS
RALPH S. HARRIS
THOMAS E. SUNDERLAND
JOHN R. MCCULLOUGH
FREDERICK W. P. LORENZEN
Counsel for Petitioner

CASES CITED

PAGE

Atchison Ry. Co. v. *Wells*, 265 U. S. 101 ..... fn. 5

Charleston Assn. v. *Alderson*, 324 U. S. 182 9

Dahnke-Walker Co. v. *Bondurant*, 257 U. S. 282 10

Davis v. *Farmers Co-operative Co.*, 262 U. S. 312, fn. 3, 5, 8

Denver & R. G. W. R. Co. v. *Terte*, 284 U. S. 284 .... fn. 5

Equitable Life Assurance Society v. *Brown*, 187 U. S. 308 4

Fiske v. *Kansas*, 274 U. S. 380 9

Michigan Central v. *Mix*, 287 U. S. 492 ..... fn. 5

Simon v. *Southern Railway*, 236 U. S. 115 ..... 3, 8, 9

STATUTES CITED

Delaware Code (1935), Section 4631 2

Section 1257(2), Title 28 U. S. C. 4, 5

MISCELLANEOUS AUTHORITIES CITED

1 Beale, *Conflict of Laws*, 377-8 9

Hansell, *The Proper Forum for Suits against Foreign Corporations*, 27 Col. L. Rev. 12, 14-5 9

McGowan, *Litigation as a Burden on Interstate Commerce*, 33 Ill. L. Rev. 875, 882 9

Supreme Court of the United States

OCTOBER TERM, 1948

STANDARD OIL COMPANY, A Corporation of the State of Indiana, *Appellant,* *vs.* THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY, and the HONORABLE FRANK L. SPEAKMAN, Sitting as Judge of Said Court, and JACOB BLAUSTEIN *Appellees*	Nos. 529-530-531

APPEALS FROM THE SUPREME COURT OF THE STATE OF DELAWARE

PETITION FOR REHEARING

To the Honorable Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

Petitioner, Standard Oil Company, a corporation of the State of Indiana, prays this Court for a rehearing, pursuant to Rule 33, of this Court's action in dismissing on March 14, 1949, "for want of a substantial federal question", petitioner's appeals from final judgments of the Supreme Court of Delaware.

The effect of the determinations below is to permit entry of judgments against petitioner in actions commenced solely

by writs of foreign attachment, although the plaintiffs are non-residents, the defendant is a foreign corporation doing no business within the State of Delaware and not qualified to do business there, and although the causes of action arose outside of that state. The conclusion of the lower court was reached *in spite of the fact* that it found that subjection of petitioner to suit in Delaware would "impair substantially the efficiency of petitioner's interstate operations" and "would be particularly burdensome to petitioner".

The appeals raise for decision by this Court the constitutionality of Section 4631 of the Delaware Code (1935) as applied and enforced against petitioner by the Delaware courts. Petitioner urged, both upon the Superior Court and upon the Supreme Court of Delaware, that the challenged statute as applied and enforced violated the commerce clause of the Constitution and denied petitioner due process under the Fourteenth Amendment. The Delaware courts expressly passed upon both constitutional questions and, in full opinions, expressly sustained the validity of the challenged statute against petitioner's claim of its repugnancy to the Constitution.

Important constitutional questions not heretofore decided by this Court are presented by these appeals. Briefly stated, the questions are:

Commerce Clause Question

Is not the challenged Delaware statute, as construed and applied by the courts below, repugnant to the commerce clause of the Constitution, in view of the fact, found by the courts below and not in dispute, that the exercise of jurisdiction in these cases pursuant thereto would "impair

POOR COPY

substantially the efficiency of petitioner's interstate operations"?

The Supreme Court of Delaware sustained the validity of the statute in question, against petitioner's attack that it imposed an unconstitutional burden on interstate commerce, solely because that court believed that "the immunity principle evolved in the *Davis* case* and followed in subsequent cases does not apply to a private business corporation such as petitioner, *even though it engages extensively in interstate commerce and transports its own materials and products across state lines, and even though subjection to suit would substantially impair the efficiency of its operations in interstate commerce*" (Exh. B to "Statement as to Jurisdiction", p. 64).**

Due Process Question

Is not the statute repugnant to the due process clause of the Fourteenth Amendment of the Constitution when construed and applied to validate attachments obtained by non-residents against a foreign corporation (not doing business and not qualified to do business in the state of the forum) in a case involving a foreign cause of action?

The Supreme Court of Delaware sustained the validity of the statute, against petitioner's attack that it denied due process of law under the Constitution, solely on the ground that actions commenced by writs of foreign attachment were *"quasi in rem"* and that, therefore, cases in this Court, such as *Simon* v. *Southern Railway*, 236 U. S. 115, relating to actions commenced by the issuance of personal process, *i.e.*, writs of summons, were inapplicable. This

*_Davis_ v. _Farmers Co-operative Co._, 262 U. S. 312.
**Italics supplied unless otherwise indicated.

determination was arrived at in spite of the finding by the lower courts that *"The present litigation would be particularly burdensome to petitioner * * * for it involves issues of tremendous magnitude and may require the taking of thousands of pages of testimony and the calling of a very large number of witnesses, none of whom resides in Delaware."* (Exh. B to "Statement as to Jurisdiction", p. 61-2.)

The principles with which these appeals are concerned are, it is respectfully submitted, of too great public importance to be settled by the dismissal of the appeals without a hearing, a form of decision which would leave grave doubts of the full import of the Court's action, especially since the questions presented have not heretofore been decided by this Court. If the law eventually should be settled otherwise than in the cases appealed from, petitioner may have in the meantime been irreparably damaged because it was denied an opportunity to present its case to this Court.

Petitioner respectfully submits that it is entitled to a rehearing for the following reasons:

Equitable Life Assurance Society v. *Brown,* 187 U. S. 308, 311, states the long established rule with respect to dismissals of appeals by this Court "for want of a substantial federal question." It is there specifically laid down that, assuming that the case falls within the language of Section 1257(2) of Title 28 and that other formalities are complied with, a "substantial federal question" is presented unless the question is

(a) "so absolutely devoid of merit as to be frivolous", or

(b) "has been so explicitly foreclosed by a decision or decisions of this Court as to leave no room for real controversy."

POOR COPY

From that case and the other decisions hereinafter referred to, it would appear that appeals under Section 1257(2) were, subject to the qualifications above stated, matters of right rather than of discretion. Otherwise such appeals would stand in the same position as petitions for writs of *certiorari* and other writs. Surely neither Congress, by its enactments, nor this Court, by its rules, intended such a result, else appeals under Section 1257(2) would have been classified with petitions for writs.

Since it requires no argument to demonstrate (a) that the appeals are not frivolous, (b) that they fall within the language of Section 1257(2) and, (c) that other formalities have been complied with, it would appear from the dismissal of the appeals that this Court was under the impression that the constitutional questions presented had been "explicitly foreclosed" by other decisions of this Court. That would mean that this Court had held: (a) that the rule of *Davis* v. *Farmers Co-operative Co.*, 262 U. S. 312, and of the three decisions expressly following that case,* in which the commerce clause was held to protect foreign corporations against the undue burden resulting from the exercise of state court jurisdiction with respect to foreign causes of action, might be invoked only by carriers for hire and that, accordingly, a private carrier, no matter how extensive its actual interstate transportation business might be and no matter how great a burden upon its activities in interstate commerce would result from the exercise of that same jurisdicition, might not invoke the protection of the commerce clause available to carriers for

---

**Atchison Ry. Co.* v. *Wells*, 265 U. S. 101; *Michigan Central* v. *Mix*, 278 U. S. 492; *Denver & R. G. W. R. Co.* v. *Terte*, 284 U. S. 284.

hire; and (b) that the protection of the Fourteenth Amendment against the exercise of state court jurisdiction, where such jurisdiction was invoked by a non-resident with respect to a foreign cause of action against a foreign corporation doing no business within the state of the forum, was available to a defendant only when the action was commenced by writ of summons and not when the action was commenced by writ of foreign attachment, although the undue burden imposed upon the foreign corporation was equally great in either case.

The dismissals of these appeals "for want of a substantial federal question" are themselves likely to be regarded as holdings to the foregoing effect.

In fact this Court has not heretofore passed on the questions posed by the appeals. Petitioner is, therefore, led to believe that it failed to emphasize with sufficient clarity in its "Statement as to Jurisdiction" the considerations upon which it believes it is entitled to a review by this Court of the judgments below.

Petitioner therefore respectfully begs leave to call this Court's attention to the following:*

1. The plaintiffs are all non-residents of Delaware, none of whom was doing any business in that state;

2. Petitioner is an Indiana corporation not qualified to do business in Delaware and in fact doing no business of any nature within that state, but on the other hand, *inter alia,* engaged on a large scale in interstate transportation in some fourteen middlewestern states;

---

*The statement of facts and arguments in this petition have necessarily been much abbreviated. A consideration of this petition in conjunction with the "Statement as to Jurisdiction" is respectfully suggested.

POOR COPY

3. The causes of action all arose outside of the State of Delaware;

4. The actions were commenced by the issuance of writs of foreign attachment pursuant to Section 4631 of the Delaware Code (1935);

5. The writs of foreign attachment sought merely to attach petitioner's interest in shares of a Delaware corporation; the writs of attachment were served upon the statutory agent of the Delaware corporation; none of the certificates of stock was physically within the State of Delaware;

6. None of the actions was directed toward a determination of title to the stock sought to be attached, nor were any of the alleged causes of action set forth in the declarations of the plaintiffs below connected in any wise with the stock sought to be attached; the actions sought total damages of approximately $50,000,000 for alleged breach of a written contract;

7. No summons or process other than the writs of attachment themselves issued out of the Delaware court;

8. No notice of the institution of the actions was given to petitioner by plaintiffs below or by the officer serving the process;

9. The defense of these actions (as specifically found by the Supreme Court of Delaware) would "impair substantially the efficiency of petitioner's interstate operations as well as cause, directly and indirectly, heavy expenses to petitioner" and "would be particularly burdensome to petitioner * * *" (Exh. B to "Statement as to Jurisdiction", p. 61).*

*The Superior Court made similar findings in identical language, except that the petitioner was there referred to as "defendant" (Exh. A to "Statement as to Jurisdiction", p. 26).

The extended consideration given to the constitutional questions both by the Superior Court and by the Supreme Court of Delaware, the action of the Supreme Court in granting a stay of further proceedings pending appeal here (R. 314-5) and the allowance of this appeal by the Chancellor of Delaware (R. 403-4), all suggest that the Chancellor and the courts below believed that substantial federal questions were here involved.

In no reported decision has this Court limited the doctrine of the *Davis* case and those following it to common carriers for hire, so as to foreclose adversely petitioner's contention with respect to the commerce clause. We respectfully submit that, in the light of the finding of the courts below that the exercise of jurisdiction over this foreign corporation would impair the efficiency of its interstate operations, no different rule should be applied to it than would have been applied had it been a carrier for hire. *At least petitioner prays that it be given an opportunity to present that thesis.*

In no reported decision has this Court limited the doctrine of *Simon* v. *Southern Railway*, 236 U. S. 115, and cognate cases, so as to foreclose adversely petitioner's contention here with respect to due process. Admittedly, where the defendant, as here, is in no wise connected with the State of Delaware, personal service of writ of summons could not have been made upon it. We submit that the rule should not be different merely because the process of writ of foreign attachment rather than of writ of summons is availed of to commence an action looking toward an *in personam* judgment. *At least petitioner prays that it be given an opportunity to present that thesis.*

It is respectfully submitted that, if the doctrine of *Davis* v. *Farmers Co-operative Co., supra,* is to be limited as it

POOR COPY

BLEED THROUGH

was below, that limitation should flow not by way of inference from the dismissal of the appeals but only from an express opinion of this Court. This is particularly true in the light of the uniform view of textbook and law review authors that there should be no such limitation. Hansell, 'The Proper Forum for Suits against Foreign Corporations", 27 Col. L. Rev. 12, 14-5; McGowan, "Litigation as a Burden on Interstate Commerce", 33 Ill. L. Rev. 875, 882; 1 Beale, "Conflict of Laws", 377-8. Similarly, if the doctrine of *Simon* v. *Southern Railway, supra,* is to be so limited, that limitation likewise should flow only from an express opinion of this Court.

Petitioner's unsuccesful attack below upon the constitutionality of the Delaware statute, as construed by the courts below, presents a case of which this Court clearly has appellate jurisdiction and the dismissal of the appeals is at variance with *Charleston Assn.* v. *Alderson,* 324 U. S. 182, where the rule was stated to be as follows (p. 185):

> "Where it appears from the opinion of the state court of last resort that a state statute was drawn in question, as repugnant to the Constitution, and that the decision of the court was in favor of its validity, we have jurisdiction on appeal."

The foregoing statement was a reiteration of a principle well established and long adhered to. Thus, in upholding its jurisdiction, this Court in *Fiske* v. *Kansas,* 274 U. S. 380, said (p. 385):

> "A decision of a state court applying and enforcing a state statute of general scope against a particular transaction as to which there was a distinct and timely insistence that, if so applied, the statute was void under the Federal Constitution, necessarily affirms the validity of the statute as so applied, and

> the judgment is, therefore, reviewable by writ of error under § 237 of the Judicial Code."

In *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282, the rule was stated thus (p. 290):

> "Our conclusion on the jurisdictional question is that, as the state court applied and enforced to the plaintiff's disadvantage a state statute which the plaintiff seasonably insisted as so applied and enforced was repugnant to the Constitution and void, the case is rightly here on writ of error."

It is in the public interest, as well as of grave importance to petitioner, that this Court determine (a) whether or not the protection of the commerce clause of the Constitution against the exercise of proscribed state court jurisdiction is available only to common carriers for hire, and (b) whether or not the protection of the due process clause of the Fourteenth Amendment is available only in actions commenced by writ of summons.

For all of the foregoing reasons petitioner respectfully prays that this Court grant this petition for rehearing and note probable jurisdiction of the appeals.

Respectfully submitted,

STANDARD OIL COMPANY,
Petitioner,

By: HUGH M. MORRIS,
RALPH S. HARRIS,
THOMAS E. SUNDERLAND,
JOHN R. MCCULLOUGH,
FREDERICK W. P. LORENZEN,
Counsel for Petitioner.

Dated: March 25, 1949.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the foregoing petition for rehearing is presented in good faith and not for delay.

RALPH S. HARRIS